IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7349 OF 2004

Shri R.G.Chavan ..Petitioner.

Versus.

1. Union of India & Ors ..Respondents.

..

Mr.G.K.Masand with Ms Ritu Singh for Petitioner

Mr.Suresh Kumar with Mr. D.A.Dubey for Respondents

CORAM: A.P.SHAH AND
S.U.KAMDAR, JJ

DATE : 1ST OCTOBER, 2004

O**ral Judgment (Per S.U.Kamdar, J)**

1. In the present petition, the petitioners is challenging the order passed by the Central Administrative Tribunal in O.A. No.493 of 2001 dated 23rd April, 2004.

Few facts of the present case are as under :-

2. The petitioner was appointed as a Packer in 1966 with the respondent no. 2. The petitioner no. 1 was a class IV employee. In 1982, he was promoted

as a Postal Assistant which is Class III post. Between the period 12th June 1991 to around 1995 the petitioner was working at Matunga Post Office and subsequently transferred at Nehru Nagar, Mumbai.

3. On certain investigations carried out by the police and the Customs Department, it was revealed that out of 12 Speed Post parcels seized by them on 12th March 1995, 8 mail contained Indian and foreign currencies valued at around Rs.3,52,83,178/-. Investigation was proceeded further and it was revealed that out of 12 parcels, 9 parcels were booked from Matunga Post Office. Investigations were further carried out and two booking clerks Miss Neeta Desai and Mrs Priya Sahani were questioned. Both of them stated that they have booked parcels at the instance of the petitioner herein. Accordingly, an enquiry was conducted under the Customs Act, 1962 against the petitioner herein. On 20th April, 1995 susbtantial material was found against the petitioner. The petitioner was arrested under section 104 of the Customs Act, 1962 read with Foreign Exchange Regulation Act. The petitioner was thereafter remanded to custody.

4. On 24th April, 1995 the petitioner no. 1 was suspended from the post of Superintendent of Posts

and a show cause notice was issued by the Customs Department under section 124 of the Customs Act, 1962 and ultimately a fine of Rs.3,00,000/-was imposed for contravention of the provisions of Customs Act, 1962. The petitioner preferred an appeal to the CEGAT who by an order dated 13th April, 1999 reduced the fine to Rs.20,000/-.

5. From 24th October, 1995 the petitioner started making representations for revocation of his suspension from service. However, the department issued a charge sheet on 18th November, 1997 against the petitioner framing three distinct charges On 30th April, 1999 on enquiry being concluded the enquiry report was filed by the Enquiry Officer. On 3rd August, 1999 the petitioner made a representation against the said enquiry report. On 9th September, 1999 the Disciplinary Authority found the petitioner guilty of the various charges particularly charge no. 2 of the said charge sheet. On 29th October, 1999 the Disciplinary Authority accepted the report of the Enquiry Officer and services of the petitioner was terminated. The petitioner preferred an apeal against the said order of termination and by an order dated 7th December, 2000 the said appeal also came to be rejected. It is this order of dismissal was the subject matter of

challenge before the Central Administrative Tribunal in O.A. No.493 of 2001. By an order dated 23rd April, 2004 the Central Administrative Tribunal has dismissed the said O.A.No.493 of 2001.

6. We have heard learned counsel for the petitioner who has inter alia contended that the petitioner being exonerated of charge no. 1, the punishment of dismissal is not commensurate with the charge against the petitioner. The said charge no. 2 for which the petitioner is found guilty reads as under :

> " that applicant was aware of the contents of the parcels under reference and with the intention to suppress the details/value of the contents, the applicant prevailed over counter booking Postal Assistants to accept the parcels for booking without examining the contents. "

7. Learned counsel has further urged that the punishment of dismissal should be set aside as it is harsh punishment for the petitioner and further contended that in any event the Central Administrative Tribunal did not take into consideration these aspects of the matter and

therefore the matter should be remanded back to the Tribunal.

8. We are not impressed with the arguments canvassed by the learned counsel. The tribunal has considered the facts in detail and in para 12 of the said judgment, it has held as under :

> " After perusal of the record it reveals that the enquiry conducted by the Enquiry Officer is consistent with the rules and in accordance with the principles of natural justice. Sufficient opportunity was given to the applicant to defend his case. The findings of the Disciplinary Authority and the Appellate Authority are based on the evidence on record, recorded by the Enquiry Officer. The evidence of Postal Assistants recorded by the Enquiry Officer shows that the applicant prevailed over them to accept the Speed Post articles weighing 200 gms without observing the prescribed procedure to accept it in open condition. It is apparent that the applicant is not at dispute that he had introduced the person who had come to book the parcels. The evidence shows that the applicant was the

senior Postal Assistant and both the witnesses who were working as Postal Assistants were junior to him and they acted as per his instructions. The report of the Enquiry Officer is self explanatory. The Disciplinary Authority has observed that the intention of the charged officer beyond the parcel booking without getting it opened was nothing but to conceal the nature of contents put therein. It is also apparent that the Disciplinary Authority while disagreeing with the findings of the Enquiry Officer on Charge No.II i.e. knowing of the contents of the parcel and before arriving at this final conclusion had given an opportunity to the applicant by issuing a show cause notice. After considering the representation given by the applicant, the Disciplinary Authority came to his own conclusion. "

9. After considering all the material the Tribunal has come to the conclusion that it is not justified to interfere with the punishment imposed by the authorities and accordingly the punishment of dismissal has been confirmed. The tribunal has also considered the contention about the punishment being

commensurate with the charges alleged and in para 14 of the said judgment, the tribunal has held as under

> " The power to impose penalty is conferred on the competent authority. What punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. The eight parcels which were accepted by the Postal Assistants without opening those at the instance of the applicant were found to have contained India and foreign currency valued equivalent to Rs,.3,52,83,178/-. The currency valued equivalent to Rs.3,52,83,178/-. The Disciplinary Authority andthe Appellate Authority have considered the gravity of the charge proved against the applicant. In such circumstances, no interference is required. "

10. We are not impressed with the various contentions raised by the learned counsel for the petitioner. The charge levelled against the

petitioner is serious. Apart therefrom, there is an ample evidence and material against the petitioner. In the aforesaid facts and circumstances, we are not inclined to interfere with the order passed by the Central Administrative Tribunal. We feel that this is not a fit case for exonerating the petitioner or modifying the punishment of dismissal imposed by the authorities.

11. In the aforesaid circumstances, we dismiss the petition. However, with no order as to costs.

A.P.SHAH, J

S.U.KAMDAR, J